HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.30632 OF 1998

Between:

The Depot Manager, APSRTC,
Ranigunj – II Depot, Secunderabad

… Petitioner

AND

K. Vijaya Kumar and another

… Respondents

:: O R D E R ::

Counsel for the petitioner : Smt. P.K. Kalyani for
Shri V.T.M. Prasad

Counsel for respondent No.1 : None

June 27, 2007

This is a petition for quashing award dated 3-6-1998 passed by Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (respondent No.2) in I.D.No.138 of 1996 for reinstatement of respondent No.1 with continuity of service and all attendant benefits except back wages.

The Facts

While he was posted as Driver in Ranigunj Depot of the Andhra Pradesh State Road Transport Corporation, bus No. AEZ 4219 driven

by respondent No.1 on Dilsukhnagar – Malkajgiri route met with an accident on 18-6-1994 resulting in death of a cyclist. The competent authority initiated departmental enquiry against respondent No.1 and on being found guilty of rash and negligent driving, he was removed from service vide order dated 28-4-1995. The appeal preferred by him was dismissed by the Divisional Manager (C), Secunderabad. Respondent No.1 then raised an industrial dispute by filing an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') as amended by Andhra Pradesh Act No.32 of 1987. He pleaded that the finding of rash and negligent driving recorded by the enquiry officer was not based on correct appreciation of evidence and the penalty of removal from service was highly disproportionate.

The learned Presiding Officer of respondent No.2 decided the issue of fairness of enquiry in favour of the petitioner and also confirmed the finding recorded by the enquiry officer that the accident was caused due to rash and negligent driving of the bus by respondent No.1. The learned Presiding Officer then considered the issue of proportionality and decided the same against the petitioner. This is evinced from paragraphs 9 to 11 of the award, which are reproduced below:

> "Now coming to the aspect of punishment for misconduct of the petitioner in causing accident while driving the bus, removal from service is not at all in proportion to the degree of misconduct. It is strikingly disproportionate.
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> Learned counsel for the petitioner has argued that the petitioner had been in the service of the respondent corporation since 1979 as driver and that he never caused any accident. Respondent corporation did not allege any accident by the petitioner prior to that o f 18-6-1994 and no such previous record of misconduct or punishment is filed.
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> Considering the above mentioned circumstances and keeping in view of the length of service that the petitioner has rendered, I

hold that the ends of justice would meet if the petitioner is reinstated into service with continuity of service and all attendant benefits but without back wages. Award is made accordingly directing the respondent to reinstate the petitioner into service with continuity of service and all attendant benefits but without back wages."

The petitioner has challenged the award mainly on the ground that exercise of power by the learned Presiding Officer of respondent No.2 under Section 11-A of the Act is vitiated by arbitrariness and non-application of mind to the record of respondent No.1. In paragraph 5 of the affidavit filed by Sri K. Vidyasagar Rao, Law Officer, Andhra Pradesh State Road Transport Corporation, Musheerabad, it has been averred that respondent No.1 had suffered four other punishments between 1981 and 1990 and this aspect was altogether ignored by the learned Presiding Officer while ordering reinstatement of respondent No.1.

I have heard learned counsel for the parties. The ambit and scope of Section 11-A of the Act was considered by the Supreme Court in **Workmen of M/s. Firestone Tyre & Rubber Co., of India v. The Management**[1]. A two Judges Bench of the Supreme Court considered the background in which Section 11-A was inserted in the Act and held:

"Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section

11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under S.11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman

only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S.11A.

The Legislature in S.11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal."

The above noted propositions have been consistently followed in all subsequent judgments and by now it must be treated as settled law that the adjudicating bodies enumerated in Section 11-A can examine the validity and fairness of the enquiry conducted by the employer, scrutinise the evidence produced during the enquiry and nullify the action taken by the employer if the finding of guilty is based on no evidence or is otherwise perverse. It is also well settled that even if the enquiry held by the enquiry officer is fair and the finding reached by the enquiry officer/employer is legally correct, the Labour Court etc. can interfere with the punishment awarded by the employer if it is found to be shockingly disproportionate to the misconduct found proved or is considered to be wholly unjust. However, this exercise

has to be undertaken by the Labour Court etc. keeping in view the factors like the length of service of the workman, his past record, the nature of misconduct found proved and its impact on the industry/establishment/organisation. To put it differently, the new jurisdiction conferred upon the Labour Court to interfere with the discretion exercised by the employer in the matter of imposition of punishment cannot be exercised ipsi dixit.

If the impugned award is examined in the light of the above stated legal position, I do not have any hesitation to hold that the learned Presiding Officer of respondent No.2 committed a jurisdictional error by setting aside the order of punishment of removal and directing reinstatement of respondent No.1 with continuity of service and all attendant benefits. Since the learned Presiding Officer of respondent No.2 did not find any infirmity in the enquiry conducted by the employer and the finding of guilty recorded by the enquiry officer, he ought not to have lightly interfered with the punishment by making a bald observation that the same is strikingly disproportionate. Before recording such conclusion, the learned Presiding Officer should have considered the total service of respondent No.1, his past record including the four punishments and then decided whether the punishment was shockingly disproportionate or unjust. However, the fact of the matter is that without considering these important factors, the learned Presiding Officer arbitrarily ordered reinstatement of respondent No.1 with all attendant benefits.

In view of the above conclusion, I would have allowed the writ petition and remanded the case for fresh adjudication of the dispute, but having regard to the fact that as on today, respondent No.1 has served for a period of 28 years including four years notional service and also the fact that he is not shown to have committed similar

misconduct after reinstatement, I feel that ends of justice will be adequately met if the punishment of removal from service imposed by the competent authority is altered to that of stoppage of two increments with cumulative effect.

In the result, the writ petition is allowed. The impugned award is set aside. However, instead of remanding the case to respondent No.1 for fresh adjudication of the dispute raised by respondent No.1, I direct that the punishment of removal from service imposed on him shall be substituted with that of stoppage of two increments with cumulative effect. Needless to say that respondent No.1 shall not be entitled to back wages and other financial benefits accruing as a result of reinstatement. However, the intervening period shall be counted for the purpose of notional fixation of his pay.

G.S.SINGHVI, CJ

June 27, 2007

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[1] AIR 1973 SC 1227